

January 15, 1952

PROVISIONS PRESENTING THE "ENEMY" PROBLEM

The following pages list the provisions singled out thus far as presenting what has been called the "enemy" problem. That is, they contain language such as "enemy", "captured by the enemy" etc. which has a clear meaning in time of war but not in time of peace. The problem is to give meaning to these terms in conjunction with the extension of these provisions into a period following the termination of a state of war.

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ITEM 263

War Hazards

Citation: Act of Dec. 2, 1942, ch. 668, 56 Stat. 1028-1036, as amended, 42 USC 1701-1706, 1711-1717.

Summary Digest: Compensation for death or injury of certain employees of the United States or of contractors of the United States, for injury or death resulting from a "war-risk hazard", as defined.

Enemy language:

"public use of the U.S. or its allies"
(this is in 42 USC 1651(b) which is referred to in 42 USC 1701)

"belligerent action of an enemy"
(section 1701(b))

"taken by an enemy"
(section 1701(b))

"war-risk hazard" (a defined term)
(sections 1701(a), 1704(a), 1704(e), 1711(b))

"enemy"
(section 1711(b))

"attack by an enemy"
(1711(b))

"action of the enemy"
(section 1711(b))

"U.S. or any of its allies"
(section 1711(b))

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ITEM 176

Missing Persons Act

Citation: Sections 1-16 of the Act of March 7, 1942, ch. 166, 56 Stat. 147, as amended, and as extended by section 4(e) of the Act of June 24, 1948, ch. 625; 62 Stat. 608.

Bigart: Certain benefits are provided for certain missing persons and for certain persons serving outside the U.S.

Enemy language: Section 1002: "captured by an enemy" --"interned in a neutral country"

Section 1013 "prisoner of war"
"government with which the United States
is at war"

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ITEM 108

Military Personnel Claims Act

Citation: Act of May 29, 1945, ch. 135, 59 Stat. 225, 31 USC 222a.
Extended in the Navy by Act of Dec. 28, 1945, ch. 597, 59 Stat 662, 31 USC 222e.

Summary digest: There is a normal one-year limitations period for claims under this act (by military personnel for damage to personal property incident to their service), but if the incident occurs "in time of war" or if "war intervenes" within 2 years thereafter, the claim may on good cause shown, be presented within 1 year "after peace is established".

Key language: "In time of war"
"if war intervenes"
"one year after peace is established"

489a

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ITEM 489a

Claims for damage to property
(non-combat activities of the Armed forces)

Citation: Act of July 3, 1943, ch. 189, sec. 1, 57 Stat. 372, 31 USC 223b,
extended to the Navy by Act of Dec. 28, 1945, 59 Stat. 662, 31 USC 223d.

Summary Digest: There is a normal 1-year limitations period for
claims under this act (claims for certain damage to property by non-combat
activities of the armed forces) but if the incident occurs ~~with~~ "in time of
war" or if "war intervenes" within one year thereafter, the claim may on
good cause shown be presented "within one year after peace is established."

Key language: "in time of war"
"if war intervenes"
"within one year after peace is established"

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7 USC 1001
42 USC 1477
42 USC 1573
43 USC 279-284
43 USC 617a
~~50 USC Apr. 561-572~~

VETERANS PREFERENCES

En

Basic language: 7 USC 1001 (a)(2) and 42 USC 1477:
"Veteran" is defined as a person who served in the land or naval forces of the U.S. "During any war between the U.S. and any other nation...."

42 USC 1573:
"Veteran" is defined as "any person who has served in the military or naval forces of the U.S. during the present war...."

43 USC 279-284:
The benefits are conferred upon "any person who has served in the military or naval forces of the U.S. for a period of at least 90 days at any time on or after September 16, 1940, and prior to the termination of the present war...."

43 USC 617a:
The benefits are conferred upon all persons who served in the U.S. Army, Navy, Marine Corps or Coast Guard during World War II, the War with Germany, the War with Spain, etc.

460

ITEM 460 - 18 USC 2153 & 2154

Destruction of war material and production of defective war material

Citation: 18 USC 2153 and 2154; definitions are in section 2151

Summary Digest: It is a crime, when the U.S. is at war, punishable by not more than 30 years imprisonment or \$10,000 fine or both (compared with 10 years and \$10,000 for comparable offense in peacetime - sec. 2154-2155) with intent to injure etc. the U.S. "or any associate nation", or with reason to believe etc. to injure or destroy any "war material, war premises or war utilities" or wilfully/^{to make} "any war material" etc. in a defective manner. "War material", "war premises" and "war utilities" are defined in terms which include reference to "any associate nation" which in its turn is defined as meaning "any nation at war with any nation with which the U.S. is at war."

Key language: See Summary digest above.

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ITEM 479

Royalty Adjustment Act

Citation: Act of Oct. 31, 1942, sections 1 and 2, ch. 634, 56 Stat 1013;
35 USC 89, 90.

Summary Digest: Authority for requiring the return to the Government of patent royalties found to be excessive "taking into account the conditions of wartime production."

Key language: "conditions of wartime production"

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Item 401 (in Document 42 but not in the
List of Statutes)

Railroad takeover

Kit

Citation: August 29, 1916, ch. 418, sec. 1, 39 Stat. 645, 10 USC 1361

Summary Digest: Power of the President "in time of war" to assume control of and utilize transportation systems to the exclusion, as far as necessary, of all other traffic for the transportation of troops "war material and equipment", or for such other purposes connected with the emergency as may be desirable.

Key language: "war material or equipment"

ITEM 390

Hospital Ships

Citation: Act of March 24, 1908, ch. 96, section 1, 35 Stat. 46, 46 USC 113.

Summary Digest: In time of war, hospital ships which fulfill the conditions of Articles I, II and III of The Hague Convention of July 29, 1899 (32 Stat. 1827, 1831, 1832) concerning maritime warfare shall be exempt from all dues and taxes imposed on vessels by the laws of the United States and from all pilotage charges. This statute implements The Hague Convention of December 21, 1904 (35 Stat. 1854, 1857) concerning the exemption of hospital ships in time of war from dues and taxes; its language is practically a verbatim reproduction of Article First of the 1904 Convention. Articles I, II and III of the 1899 Hague Convention referred to require among other things that the names of the vessels shall be "communicated to the belligerent Powers at the beginning or during the course of hostilities" (Article I); that "the belligerent Power to whom they belong" shall commission them and notify their names "to the hostile Power at the commencement of or during hostilities" (Article II); or that "the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent powers at the commencement of or during hostilities" (Articles III).

Enemy language: See summary digest above.

Note: A third convention, the Hague Convention of 1907 (36 Stat. 2371, 2383, 2384) concerning hospital ships in maritime warfare, superseded the 1899 Convention as between the parties thereto. It was ratified after enactment of this item but the Senate gave its consent to ratification two weeks before the enactment of this item. Articles I, II and III of these two Conventions are identical in substance with the exception of Article III, which requires that the ships shall be "placed under the control of one of the belligerents" and their names notified by the "belligerent" to "his adversary at the commencement of or during hostilities."

36 USC 179

Window flags

Citation: Act of October 17, 1942, ch. 615, sec. 1, 56 Stat. 796; 36 USC 179

Summary Digest: The Secretary of War is directed to approve a design for a window flag for display at the place of residence of members of the immediate family of a person "serving in the armed forces of the United States during the present war."

Enemy language: "serving in the armed forces of the United States during the current war."

(See also 36 USC 182a to 182d)

50 USC App. 572
(Item 365c)

50 USC App. 572
(Item 365c)

at

Citation: Act of October 17, 1940, ch. 888; sec. 512, 54 Stat. 1190,
as amended; 50 USC App. 572; duration limited by section 604, 50 USC App. 584

Summary Digest: United States citizens serving in allied armies shall
have the same benefits with respect to rights in public lands as United
States citizens serving in United States forces.

Every language: "Any nation with which the United States may be allied
in the prosecution of any war in which the United States engages while
this Act remains in force."